

108TH CONGRESS  
2D SESSION

# H. R. 5104

To amend the Marine Mammal Protection Act of 1972 to authorize appropriations for the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 2004

Mr. GILCHREST introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To amend the Marine Mammal Protection Act of 1972 to authorize appropriations for the John H. Prescott Marine Mammal Rescue Assistance Grant Program, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Prescott Marine Mam-  
5       mal Stranding Program Amendments of 2004”.

6       **SEC. 2. AMENDMENT REFERENCES.**

7       Except as otherwise expressly provided, whenever in  
8       this Act an amendment or repeal is expressed in terms

1 of an amendment to, or repeal of, a section or other provi-  
 2 sion, the reference shall be considered to be made to such  
 3 section or other provision of the Marine Mammal Protec-  
 4 tion Act of 1972 (16 U.S.C. 1361 et seq.).

5 **SEC. 3. AUTHORIZATIONS OF APPROPRIATIONS FOR JOHN**

6 **H. PRESCOTT MARINE MAMMAL RESCUE AS-**  
 7 **SISTANCE GRANT PROGRAM.**

8 (a) GRANT PROGRAM.—Section 408(h) (16 U.S.C.  
 9 1421f–1(h)) is amended by striking “fiscal years 2001  
 10 through 2003” and inserting “fiscal years 2005 through  
 11 2009”.

12 (b) MARINE MAMMAL UNUSUAL MORTALITY EVENT  
 13 FUND.—Section 409(3) (16 U.S.C. 1421g(3)) is amended  
 14 by striking “\$500,000 for fiscal year 1993” and inserting  
 15 “\$125,000 for each of fiscal years 2005 through 2009”.

16 (c) ADMINISTRATIVE COSTS AND EXPENSES.—Sec-  
 17 tion 408 (16 U.S.C. 1421f–1) is amended—

18 (1) by adding at the end of subsection (a)(1)  
 19 the following: “All funds available to implement this  
 20 section shall be distributed to eligible stranding net-  
 21 work participants for the purposes set forth in this  
 22 paragraph, except as provided in subsection (f).”;  
 23 and

24 (2) by amending subsection (f) to read as fol-  
 25 lows:

1       “(f) ADMINISTRATIVE COSTS AND EXPENSES.—Of  
 2 the amounts available each fiscal year to carry out this  
 3 section, the Secretary may expend not more than 6 per-  
 4 cent or \$80,000, whichever is greater, to pay the adminis-  
 5 trative costs and administrative expenses to implement the  
 6 grant program under subsection (a). Any such funds re-  
 7 tained by the Secretary for a fiscal year for such costs  
 8 and expenses that are not used for such costs and ex-  
 9 penses before the end of the fiscal year shall be provided  
 10 as grants under subsection (a).”.

11       (d) CONTRIBUTIONS.—Section 408 (16 U.S.C.  
 12 1421f–1) is further amended by adding at the end the fol-  
 13 lowing:

14       “(i) CONTRIBUTIONS.—For purposes of carrying out  
 15 this section, the Secretary may solicit, accept, receive,  
 16 hold, administer, and use gifts, devises, and bequests.”.

17 **SEC. 4. TECHNICAL CORRECTIONS.**

18       (a) COMMITTEE REFERENCES.—The Marine Mam-  
 19 mal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is  
 20 amended by striking “Committee on Merchant Marine and  
 21 Fisheries” each place it appears and inserting “Committee  
 22 on Resources”.

23       (b) OBSOLETE REFERENCE TO SECTION.—Section  
 24 118(c)(3)(A)(i) (16 U.S.C. 1387(c)(3)(A)(i)) is amended

1 by striking “, except that” and all that follows through  
2 “is valid”.

3 **SEC. 5. LIMITED AUTHORITY TO EXPORT MARINE MAMMAL**  
4 **PRODUCTS.**

5 (a) IN GENERAL.—Section 101(a)(6) (16 U.S.C.  
6 1371(a)(6)) is amended by redesignating subparagraph  
7 (B) as subparagraph (C), and by inserting after subpara-  
8 graph (A) the following:

9 “(B) A marine mammal product may be ex-  
10 ported from the United States if the product—

11 “(i) is legally possessed, and exported by,  
12 a citizen of the United States for noncommer-  
13 cial purposes in conjunction with travel outside  
14 the United States and the product is imported  
15 into the United States by the same person upon  
16 the termination of travel;

17 “(ii) is legally possessed, and exported by,  
18 a person that is not a citizen of the United  
19 States for noncommercial purposes;

20 “(iii) is legally possessed and exported as  
21 part of a cultural exchange, by an Indian,  
22 Aleut, or Eskimo residing in Alaska; or

23 “(iv) is owned by a Native inhabitant of  
24 Russia, Canada, or Greenland and is exported  
25 for noncommercial purposes—

1 “(I) in conjunction with, and upon the  
 2 completion of, travel within the United  
 3 States; or

4 “(II) as part of a cultural exchange  
 5 with an Indian, Aleut, or Eskimo residing  
 6 in Alaska.”.

7 (b) CONFORMING AMENDMENT.—Section  
 8 101(a)(6)(A)(i) (16 U.S.C. 1371(a)(6)(A)(i)) is amended  
 9 by inserting “for noncommercial purposes” after “United  
 10 States” the first place it appears.

11 **SEC. 6. TAKE REDUCTION PLANS.**

12 (a) IN GENERAL.—Section 118 (16 U.S.C. 1387) is  
 13 amended as follows:

14 (1) In subsection (a) by striking “commercial”  
 15 each place it appears in paragraphs (1) and (5).

16 (2) In subsection (c)(1) by striking so much as  
 17 precedes subparagraph (B) and inserting the fol-  
 18 lowing:

19 “(c) REGISTRATION AND AUTHORIZATION.—(1) The  
 20 Secretary shall, within 90 days after the date of enactment  
 21 of the Marine Mammal Protection Act Amendments of  
 22 2004—

23 “(A) publish in the Federal Register for public  
 24 comment, for a period of not less than 90 days, any  
 25 necessary changes to the Secretary’s list of fisheries

published under section 114(b)(1) in the Federal Register on August 24, 1994 (along with an explanation of such changes and a statement describing the marine mammal stocks interacting with, and the approximate number of vessels or persons actively involved in, each such fishery), with respect to—

“(i) commercial and recreational fisheries that have frequent incidental mortality and serious injury of marine mammals;

“(ii) commercial and recreational fisheries that have occasional incidental mortality and serious injury of marine mammals; or

“(iii) commercial fisheries that have a remote likelihood of or no known incidental mortality or serious injury of marine mammals;”.

(3) In subsection (c)(1) in subparagraphs (B) and (C) by striking “commercial”.

(4) In subsection (c)(2)(A) by striking “commercial”.

(5) In subsection (c)(3)(A) in the matter preceding clause (i) by striking “a commercial fishery” and inserting “that fishery”.

(6) In subsection (c)(3)(E) by inserting “commercial” after “any”.

1           (7) In subsection (c)(5)(B) by striking “com-  
2       mercial”.

3           (8) In subsection (d)(1) in the matter preceding  
4       subparagraph (A) by striking “commercial fishing  
5       operations” and inserting “fishing operations in a  
6       fishery listed under subsection (c)(1)(A)(i) or (ii)”.

7           (9) In subsection (d)(3) in the matter preceding  
8       subparagraph (A) by striking “commercial fisheries”  
9       and inserting “fisheries listed under subsection  
10      (c)(1)(A)(i) or (ii)”.

11          (10) In subsection (d)(4) as follows:

12                (A) In the matter preceding subparagraph  
13                (A) by striking “commercial fisheries” and in-  
14                serting “fisheries listed under subsection  
15                (c)(1)(A)(i) or (ii)”.

16                (B) In subparagraph (A) by striking “com-  
17                mercial fisheries” and inserting “fisheries listed  
18                under subsection (c)(1)(A)(i) or (ii)”.

19                (C) In subparagraph (B) by striking “com-  
20                mercial fisheries” and inserting “fisheries listed  
21                under subsection (c)(1)(A)(i) or (ii)”.

22                (D) In subparagraph (C) by striking “com-  
23                mercial fisheries” and inserting “fisheries listed  
24                under subsection (c)(1)(A)(i) or (ii)”.

1           (11) In subsection (d)(5) by striking “commer-  
2       cial fishing operations” and inserting “fishing oper-  
3       ations in fisheries listed under subsection  
4       (c)(1)(A)(i) or (ii)”.

5           (12) In subsection (e) in the matter preceding  
6       paragraph (1)—

7                 (A) by striking “commercial” each place it  
8       appears; and

9                 (B) by striking “this Act” and inserting  
10       “this section”.

11           (13) In subsection (f) by striking so much as  
12       precedes paragraph (2) and inserting the following:

13       “(f) TAKE REDUCTION PLANS.—(1) The Secretary  
14       shall develop and implement a take reduction plan de-  
15       signed to assist in the recovery or prevent the depletion  
16       of each strategic stock which interacts with a fishery listed  
17       under subsection (c)(1)(A)(i) or (ii), unless the Secretary  
18       determines, after notice and opportunity for public com-  
19       ment, that the level of fishery related mortality and seri-  
20       ous injury is having a negligible impact on that stock. The  
21       Secretary may develop and implement a take reduction  
22       plan for any other marine mammal stocks which interact  
23       with a fishery listed under subsection (c)(1)(A)(i) which  
24       the Secretary determines, after notice and opportunity for

1 public comment, has a high level of mortality and serious  
2 injury across a number of such marine mammal stocks.”.

3 (14) In subsection (f)(2)—

4 (A) by striking “6 months” and inserting  
5 “9 months”; and

6 (B) by striking “commercial fishing oper-  
7 ations” each place it appears and inserting  
8 “fishing operations in fisheries listed under sub-  
9 section (c)(1)(A)(i) or (ii)”.

10 (15) In subsection (f)(3) by striking “commer-  
11 cial”.

12 (16) In subsection (f)(4)(B) by striking “com-  
13 mercial fishing operations” and inserting “fishing  
14 operations in fisheries listed under subsection  
15 (c)(1)(A)(i) or (ii)”.

16 (17) In subsection (f)(5)—

17 (A) in subparagraph (A) by striking “6  
18 months” and inserting “9 months”; and

19 (B) in subparagraphs (A) and (B) by  
20 striking “commercial” each place it appears.

21 (18) In subsection (f)(6)(A)—

22 (A) by striking “(not later than 30 days)”;  
23 and

1 (B) in clause (ii) by striking “commercial  
2 fisheries” and inserting “fisheries listed under  
3 subsection (c)(1)(A)(i) or (ii)”.

4 (19) In subsection (f)(6)(C) in the second sen-  
5 tence, by inserting before “, and others” the fol-  
6 lowing: “, where appropriate a representative of the  
7 office of General Counsel of the National Oceanic  
8 and Atmospheric Administration, a representative of  
9 the National Marine Fisheries Service having re-  
10 sponsibilities related to fisheries science, a represent-  
11 ative of the National Marine Fisheries Service hav-  
12 ing responsibilities related to law enforcement, and  
13 a representative of the appropriate National Marine  
14 Fisheries Service Regional Administrator”.

15 (20) In subsection (f)(7)—

16 (A) in subparagraph (A)(i) by striking “6  
17 months” and inserting “9 months”;

18 (B) in subparagraph (B)(i)—

19 (i) by striking “not later than 60  
20 days” and inserting “not later than 120  
21 days”; and

22 (ii) by adding at the end the fol-  
23 lowing: “Before publishing any plan that is  
24 different than the draft plan proposed by  
25 a take reduction team, the Secretary shall

1 reconvene the team and explain to the  
2 team the differences between the published  
3 plan and the draft plan proposed by the  
4 team.”; and

5 (C) in subparagraph (B)(ii)—

6 (i) by striking “6 months” and insert-  
7 ing “9 months”; and

8 (ii) by striking “not later than 8  
9 months” and inserting “not later than 11  
10 months”.

11 (21) In subsection (f)(7)(C) by striking “Not  
12 later than 60 days” and inserting “Not later than  
13 90 days”.

14 (22) In subsection (f)(7)(D) by striking “com-  
15 mercial”.

16 (23) In subsection (f)(8)—

17 (A) in subparagraph (C) by striking “Not  
18 later than 60 days” and inserting “Not later  
19 than 180 days”; and

20 (B) by striking “commercial” each place it  
21 appears.

22 (24) In subsection (f)(9) as follows:

23 (A) In subparagraph (A) by striking “com-  
24 mercial fisheries or restrict commercial fish-  
25 eries” and inserting “fisheries listed under sub-

1 section (c)(1)(A)(i) or (ii) or restrict such fish-  
2 eries”.

3 (B) In subparagraphs (B) and (C) by  
4 striking “commercial” each place it appears.

5 (C) In subparagraph (D) by striking “com-  
6 mercial fishing operations” and inserting “par-  
7 ticipation in a fishery listed under subsection  
8 (c)(1)(A)(i) or (ii)”.

9 (25) In subsection (g)(1) by striking “commer-  
10 cial fisheries” and inserting “fisheries listed under  
11 subsection (c)(1)(A)(i) or (ii)”.

12 (26) In subsection (g)(3)(B) by striking “com-  
13 mercial”.

14 (27) In subsection (g)(4) by striking “commer-  
15 cial fishery” and inserting “fishery listed under sub-  
16 section (c)(1)(A)(i) or (ii)”.

17 (28) In subsection (j) by inserting “including  
18 observer, research, and education and outreach pro-  
19 grams,” after “For purposes of carrying out this  
20 section,”.

21 (29) By amending subsection (d)(1)(C) to read  
22 as follows:

23 “(C) identify current fishery regulations and  
24 changes in fishing methods or technology that may

1 increase or decrease incidental mortality and serious  
2 injury.”.

3 (30) In subsection (f)(2) in the last sentence by  
4 inserting “conservation benefits of” before “State or  
5 regional fishery management plans.”.

6 (31) By amending subsection (f)(4)(A) to read  
7 as follows:

8 “(A) a review of the information in the final  
9 stock assessment published under section 117(b),  
10 any substantial new information, a review of the  
11 conservation benefits from current State and re-  
12 gional fishery management regulations;”.

13 (b) STOCK ASSESSMENTS.—Section 117(a)(4) is  
14 amended—

15 (1) by striking “and” at the end of subpara-  
16 graph (C);

17 (2) by inserting “and” at the end of subpara-  
18 graph (D); and

19 (3) by adding at the end the following:

20 “(E) potential conservation benefits pro-  
21 vided by State and regional fishery manage-  
22 ment regulations;”.

23 (c) ZERO MORTALITY RATE GOAL AMENDMENTS.—  
24 Section 118 (16 U.S.C. 1387) is amended in subsections

1 (a)(1) and (b)(1) by striking “within 7 years after the date  
2 of enactment of this section” each place it appears.

3 (d) CONFORMING AMENDMENT.—Section  
4 101(a)(5)(E) (16 U.S.C. 1371(a)(5)(E)) is amended by  
5 inserting “or recreational” after “commercial” each place  
6 it appears.

7 **SEC. 7. PINNIPED RESEARCH.**

8 Section 120 (16 U.S.C. 1389) is amended by adding  
9 at the end the following:

10 “(k) RESEARCH ON NONLETHAL REMOVAL AND  
11 CONTROL.—(1) The Secretary shall conduct research on  
12 the nonlethal removal and control of nuisance pinnipeds.  
13 The research shall include a review of measures that have  
14 been taken to effect such removal and control, the effec-  
15 tiveness of these measures, and the development of new  
16 technologies to deter nuisance pinnipeds.

17 “(2) The Secretary shall include, among the individ-  
18 uals that develop the research program under this sub-  
19 section, representatives of the commercial and recreational  
20 fishing industries.

21 “(3) The Secretary is encouraged, where appropriate,  
22 to use independent marine mammal research institutions  
23 in developing and in conducting the research program.

24 “(4) The Secretary shall, by December 31 of each  
25 year, submit an annual report on the results of research

1 under this subsection to the Committee on Resources of  
2 the House of Representatives and the Committee on Com-  
3 merce, Science, and Transportation of the Senate.

4 “(1) QUALIFIED NONLETHAL CONTROL PROJECTS.—

5 “(1) IN GENERAL.—The Secretary may, to the  
6 extent amounts are available to carry out this sub-  
7 section, provide a grant to any eligible applicant to  
8 carry out a qualified nonlethal control project in ac-  
9 cordance with this subsection.

10 “(2) APPLICATIONS.—The Secretary shall—

11 “(A) publish guidelines for and solicit ap-  
12 plications for grants under this subsection not  
13 later than 6 months after the date of enactment  
14 of this subsection; and

15 “(B) receive, review, evaluate, and approve  
16 applications for grants under this subsection.

17 “(3) ELIGIBLE APPLICANT.—To be an eligible  
18 applicant for purposes of paragraph (1), an appli-  
19 cant must—

20 “(A) be a State, local government, or  
21 interstate or regional agency; and

22 “(B) have adequate personnel, funding,  
23 and authority to carry out and monitor or  
24 maintain a nonlethal control of nuisance  
25 pinnipeds project.

1           “(4) QUALIFIED CONTROL PROJECT.—To be a  
2           qualified control project under this subsection, a  
3           project must—

4                   “(A) by humane and nonlethal means, re-  
5                   move, deter, and control nuisance pinnipeds in  
6                   areas where they are a recurrent and persistent  
7                   threat to public health and safety; and

8                   “(B) encourage public notice, education,  
9                   and outreach on project activities in the af-  
10                  fected community.

11           “(5) GRANT DURATION.—Each grant under  
12           this subsection shall be to provide funding for the  
13           Federal share of the cost of a project carried out  
14           with the grant for up to 2 fiscal years.

15           “(6) REPORTING BY GRANTEE.—

16                   “(A) IN GENERAL.—A grantee carrying  
17                   out a control project with a grant under this  
18                   subsection shall report to the Secretary at the  
19                   expiration of the grant.

20                   “(B) REPORT CONTENTS.—Each report  
21                   under this subsection shall include specific in-  
22                   formation on the methods and techniques used  
23                   to control nuisance pinniped species in the  
24                   project area, and on the ensuing results.

25           “(7) COST SHARING.—

1           “(A) FEDERAL SHARE.—Except as pro-  
2           vided in paragraphs (2) and (3), the Federal  
3           share of the cost of a project carried out with  
4           a grant under this subsection shall not exceed  
5           75 percent of such cost.

6           “(B) APPLICATION OF IN-KIND CONTRIBU-  
7           TIONS.—The Secretary may apply to the non-  
8           Federal share of costs of a control project car-  
9           ried out with a grant under this subsection the  
10          fair market value of services or any other form  
11          of in-kind contribution to the project made by  
12          non-Federal interests that the Secretary deter-  
13          mines to be an appropriate contribution equiva-  
14          lent to the monetary amount required for the  
15          non-Federal share of the activity.

16          “(C) DERIVATION OF NON-FEDERAL  
17          SHARE.—The non-Federal share of the cost of  
18          a control project carried out with a grant under  
19          this subsection may not be derived from a Fed-  
20          eral grant program or other Federal funds.

21          “(8) AUTHORIZATION OF APPROPRIATIONS.—  
22          There are authorized to be appropriated to the Sec-  
23          retary \$1,500,000 for each of fiscal years 2005  
24          through 2009.

1           “(9) CLARIFICATION.—Nothing in this sub-  
2           section shall be interpreted as suspending or waiving  
3           any requirement under any other provision of this  
4           Act.”.

5   **SEC. 8. MARINE MAMMAL COMMISSION.**

6           (a) NUMBER OF EMPLOYEES.—Section 206(5) (16  
7   U.S.C. 1406(5)) is amended by striking “; except that no  
8   fewer than 11 employees must be employed under para-  
9   graph (1) at any time”.

10          (b) ADMINISTRATION.—Section 206 (16 U.S.C.  
11 1406) is amended—

12               (1) in paragraph (4) by striking “(but at rates  
13   for individuals not to exceed \$100 per diem)”; and

14               (2) in paragraph (5) by striking “Financial”  
15   and all that follows through the end of that sen-  
16   tence.

17   **SEC. 9. SCRIMSHAW EXEMPTION.**

18           Any valid certificate of exemption referred to in sec-  
19   tion 18 of Public Law 103–238 (16 U.S.C. 1539 note)  
20   that was valid under that section on April 29, 1999, shall  
21   be valid during the 10-year period beginning October 31,  
22   1999.

23   **SEC. 10. CAPTIVE RELEASE PROHIBITION.**

24           Section 102(a) (16 U.S.C. 1372(a)) is amended—

1           (1) in paragraph (4) by striking “subsection  
2       104(c); and” and inserting “section 104(c);”;

3           (2) in paragraph (5) by striking the period and  
4       inserting “; and”; and

5           (3) by adding at the end the following:

6           “(6) for any person that is subject to the juris-  
7       diction of the United States to release any captive  
8       marine mammal unless specifically authorized to do  
9       so under section 104(c)(3)(A), 104(c)(4)(A), or  
10      109(h), except that this paragraph shall not apply to  
11      the temporary release of any marine mammal that  
12      is—

13                   “(A) maintained in captivity under section  
14               7524 of title 10, United States Code (including  
15               any progeny of a marine mammal maintained  
16               under that section); or

17                   “(B) the progeny of a marine mammal ex-  
18               cluded from coverage under this Act by section  
19               102(e).”.

20   **SEC. 11. TROPICAL TREATY CONFORMING AMENDMENT.**

21       Subsection (c) of the Dolphin Protection Consumer  
22   Information Act (16 U.S.C. 1385) is amended in para-  
23   graph (2) by striking “160 degrees west longitude” and  
24   inserting “150 degrees west longitude”.

1 **SEC. 12. PERMIT CLARIFICATIONS.**

2 (a) CLARIFICATIONS.—Section 104 (16 U.S.C. 1374)  
3 is amended as follows:

4 (1) Subsection (c)(7) is amended by inserting  
5 “notwithstanding any other provision of law” after  
6 “requesting the permit”.

7 (2) Subsection (c)(9) is amended to read as fol-  
8 lows:

9 “(9)(A) No marine mammal may be exported—  
10 “(i) for the purpose of public display,  
11 unless the Secretary of Agriculture evalu-  
12 ates and verifies, and thereafter notifies  
13 the Secretary, that the receiving facility  
14 meets standards that are comparable to  
15 the requirements that a person must meet  
16 to receive a permit under this subsection  
17 for that purpose; or

18 “(ii) for the purpose of scientific re-  
19 search or enhancing the survival or recov-  
20 ery of a species or stock, unless the receiv-  
21 ing facility meets standards that are com-  
22 parable to the requirements that a person  
23 must meet to receive a permit under this  
24 subsection for that purpose.

25 “(B) The Secretary may not require or request,  
26 through comity or any other means, that any marine

1 mammal or its progeny remain subject to the juris-  
2 diction of the United States when located in waters  
3 or on lands that are subject to the jurisdiction of an-  
4 other country.”.

5 (3) Subsection (c)(10) is amended—

6 (A) in the first sentence by inserting “held  
7 within the lands and waters of the United  
8 States” after “marine mammals” each place it  
9 appears;

10 (B) by inserting after the first sentence  
11 the following: “The Secretary shall update the  
12 inventory on an annual basis.”; and

13 (C) in subparagraph (D) by inserting  
14 “ownership, or other” after “date of”.

15 (b) REVIEW AND REPORT REGARDING INVEN-  
16 TORY.—

17 (1) REVIEW.—The Secretaries of Commerce  
18 and the Interior shall, by not later than 12 months  
19 after date of the enactment of this Act, jointly con-  
20 duct a review of the inventory maintained under sec-  
21 tion 104(c)(10) of the Marine Mammal Protection  
22 Act of 1972 (16 U.S.C. 1374(c)(10)), the use of the  
23 information in the inventory, and the costs, benefits,  
24 and issues associated with the development of an on-  
25 line inventory.

1           (2) CONSULTATION.—In conducting the review,  
2           the Secretary shall consult and solicit input from  
3           persons who are required to provide information for  
4           the inventory.

5           (3) REPORT.—The Secretary shall submit a re-  
6           port to Committee on Resources of the House of  
7           Representatives and the Committee on Commerce,  
8           Science and Transportation of the Senate on the  
9           findings of the review under this subsection. The re-  
10          port shall include the following:

11                 (A) Recommendations on whether the in-  
12                 ventory should be maintained by the Secretary  
13                 or by another person under contract.

14                 (B) How the Secretary would oversee  
15                 maintenance of the inventory carried out under  
16                 contract.

17                 (C) How public access and access by Fed-  
18                 eral agencies to the inventory can be main-  
19                 tained if the inventory is maintained under con-  
20                 tract.

21                 (D) How the Secretary can minimize dupli-  
22                 cation on the information the Secretary receives  
23                 from public display facilities and reduce the  
24                 paper work burden on those facilities.

1           (E) An estimate of the cost of maintaining  
2           the inventory.

3           (F) A description of how the Secretary will  
4           ensure the secure maintenance of the data in  
5           the inventory.

6           (G) An analysis of the potential that online  
7           availability of the information in the inventory  
8           could adversely affect the safety of the animals.

9   **SEC. 13. FISHERIES GEAR DEVELOPMENT.**

10       Section 111 (16 U.S.C. 1381) is amended as follows:

11           (1) Subsection (a) is amended to read as fol-  
12       lows:

13       “(a) RESEARCH AND DEVELOPMENT PROGRAM.—

14           “(1) IN GENERAL.—The Secretary of Com-  
15       merce (in this section referred to as the ‘Secretary’)  
16       shall—

17           “(A) carry out a program of research and  
18       development for the purpose of devising im-  
19       proved fishing methods and gear so as to re-  
20       duce to the maximum extent practicable the in-  
21       cidental taking of marine mammals in connec-  
22       tion with fishing operations; and

23           “(B) make every practicable effort to de-  
24       velop, evaluate, and make available to owners  
25       and operators of fishing vessels such gear and

1 fishing method improvements as quickly as pos-  
2 sible.

3 “(2) COORDINATION WITH OTHER COUN-  
4 TRIES.—The Secretary may coordinate with other  
5 countries to foster gear technology transfer initia-  
6 tives to reduce to the maximum extent practicable  
7 the incidental mortality and serious injury of marine  
8 mammals throughout the full extent of their range.”.

9 (2) By adding at the end the following:

10 “(e) GEAR RESEARCH MINI-GRANT PROGRAM.—

11 “(1) IN GENERAL.—Subject to the availability  
12 of appropriations, the Secretary may establish a  
13 grant program to provide financial assistance for de-  
14 veloping, manufacturing, testing, or designing new  
15 types of fishing gear designed to reduce to the max-  
16 imum extent practicable the incidental taking (in-  
17 cluding incidental mortality and serious injury) of  
18 marine mammals.

19 “(2) GRANT AMOUNT AND PURPOSES.—The  
20 amount of a grant under this subsection may not ex-  
21 ceed \$20,000.

22 “(3) GRANT APPLICATIONS.—To receive a  
23 grant under this section, an applicant must submit  
24 an application in such form and manner as the Sec-  
25 retary may prescribe.

1           “(4) CONSULTATION REGARDING CRITERIA.—  
2       The Secretary shall consult with the Secretary of the  
3       Interior and the Marine Mammal Commission re-  
4       garding the development of criteria for the awarding  
5       of grants under this subsection.

6           “(5) ADMINISTRATIVE COSTS.—Of amounts  
7       available each fiscal year to carry out this sub-  
8       section, the Secretary may expend not more than  
9       \$40,000 to pay the administrative expenses nec-  
10      essary to carry out this subsection.

11          “(6) CONTRIBUTIONS.—For purposes of car-  
12      rying out this section, the Secretary may accept, so-  
13      licit, receive, hold, administer, and use gifts, devises,  
14      and bequests.

15          “(f) AUTHORIZATION OF APPROPRIATIONS.—To  
16      carry out this section there is authorized to be appro-  
17      priated to the Secretary \$1,500,000 for each of fiscal  
18      years 2005 through 2009.”.

19   **SEC. 14. MARINE MAMMAL RESEARCH GRANTS.**

20       Section 110 (16 U.S.C. 1380) is amended—

21           (1) by amending subsection (a) to read as fol-  
22      lows:

23          “(a) AUTHORIZATION OF ASSISTANCE; ANNUAL RE-  
24      PORT.—

1           “(1) AUTHORIZATION OF ASSISTANCE.—The  
2       Secretary may make grants, or provide financial as-  
3       sistance in such other form as the Secretary con-  
4       siders appropriate, to any Federal or State agency,  
5       public or private institution, or other person for the  
6       purpose of assisting such agency, institution, or per-  
7       son to undertake research in subjects that are rel-  
8       evant to the protection and conservation of marine  
9       mammals, and the ecosystems upon which they de-  
10      pend, including, but not limited to, the Bering/  
11      Chukchi Sea ecosystem and the California coastal  
12      marine ecosystem.

13           “(2) INCLUSION OF INFORMATION IN RE-  
14      PORTS.—The Secretary shall include a description of  
15      the annual results of research carried out with as-  
16      sistance under this section in the report required  
17      under section 103(f).

18           “(3) CONTRIBUTIONS.—For purposes of car-  
19      rying out this section, the Secretary may accept, so-  
20      licit, receive, hold, administer, and use gifts, devises,  
21      and bequests.”; and

22           (2) by striking subsections (c) and (d) and in-  
23      serting the following:

24           “(c) AUTHORIZATION OF APPROPRIATIONS.—To  
25      carry out this section there is authorized to be appro-

1 priated to the Secretary \$1,500,000 for each of fiscal  
2 years 2005 through 2009.”.

3 **SEC. 15. FINES AND PENALTIES.**

4 (a) FINES AND PENALTIES, GENERALLY.—Section  
5 105 (16 U.S.C. 1375) is amended—

6 (1) in subsection (a)(1) by striking “\$10,000”  
7 and inserting “\$20,000”; and

8 (2) in subsection (b) by striking “\$20,000” and  
9 inserting “\$30,000”.

10 (b) VESSEL PENALTY.—Section 106(b) (16 U.S.C.  
11 1376(b)) is amended by striking “\$25,000” and inserting  
12 “\$35,000”.

13 **SEC. 16. COOPERATIVE AGREEMENTS IN ALASKA.**

14 (a) DEFINITION OF DEPLETION AND DEPLETED.—  
15 Section 3(1)(A) (16 U.S.C. 1362(1)(A)) is amended by  
16 striking “of this Act,” and inserting “and, for any stock  
17 subject to a cooperative management agreement with a  
18 harvest management plan entered into under section 119,  
19 those Alaska Native organizations that are signatories to  
20 such an agreement,”.

21 (b) EXEMPTION OF TAKINGS FOR SUBSISTENCE OR  
22 AUTHENTIC NATIVE ARTICLES.—Section 101(b) (16  
23 U.S.C. 1371) is amended by striking “section 109” and  
24 inserting “sections 109 and 119(c) and (d)”.

1       (c) USE OF ALASKA NATIVE ORGANIZATIONS FOR  
2 ENFORCEMENT.—Section 107(a) (16 U.S.C. 1377(a)) is  
3 amended by inserting “, or of an Alaska Native organiza-  
4 tion for purposes of enforcing this title pursuant to a har-  
5 vest management plan with the organization under section  
6 119” after “Federal agency”.

7       (d) MARINE MAMMAL COMANAGEMENT AGREE-  
8 MENTS IN ALASKA.—Section 119 (16 U.S.C. 1388) is  
9 amended—

10           (1) by striking subsections (a), (b), and (d);

11           (2) by redesignating subsection (c) as sub-  
12 section (j); and

13           (3) by inserting before subsection (j) (as so re-  
14 designated) the following:

15       “(a) IN GENERAL.—The Secretary may enter into co-  
16 operative management agreements with Alaska Native or-  
17 ganizations to conserve and manage any stock of marine  
18 mammals and provide comanagement of subsistence use  
19 by Alaska Natives. Such agreements may include a har-  
20 vest management plan governing Alaska Native subsist-  
21 ence use for those stocks or species covered by the cooper-  
22 ative management agreement.

23       “(b) MANAGEMENT PLAN REQUIREMENTS.—A har-  
24 vest management plan under this section with an Alaska  
25 Native organization shall—

1 “(1) apply only to Alaska Natives, as defined in  
2 section 101(b);

3 “(2) identify the signatories to the plan, and  
4 the stock or species and geographic area covered by  
5 the plan;

6 “(3) be based on biological information and tra-  
7 ditional ecological knowledge;

8 “(4) provide for a sustainable harvest of each  
9 stock or species covered by the plan, and is designed  
10 to prevent populations of such stocks and species  
11 from becoming depleted;

12 “(5) have a clearly defined process and author-  
13 ity for enforcement and implementation of any man-  
14 agement prescriptions under the plan; and

15 “(6) specify the duration of the plan and set  
16 forth procedures for periodic review and termination  
17 of the plan.

18 “(c) IMPLEMENTING REGULATIONS AND ORDI-  
19 NANCES.—

20 “(1) IN GENERAL.—An Alaska Native organiza-  
21 tion may adopt regulations and ordinances that  
22 apply to Alaska Natives exclusively and that are con-  
23 sistent with, and necessary to implement and en-  
24 force, a harvest management plan entered into by  
25 the organization under this section.

1           “(2) DEPLETED STOCKS.—A regulation or ordi-  
2       nance adopted pursuant to this subsection for a de-  
3       pleted stock shall apply only to the extent the regu-  
4       lation or ordinance is consistent with regulations  
5       issued by the Secretary under sections 101(b) and  
6       103 that apply to such stock.

7           “(d) PROHIBITION.—It is unlawful for any Alaska  
8       Native within the geographic area to which a harvest man-  
9       agement plan under this section applies, to take, trans-  
10      port, sell, or possess a marine mammal in violation of any  
11      regulation or ordinance adopted by an Alaska Native orga-  
12      nization to implement and enforce a harvest management  
13      plan.

14          “(e) GRANTS.—Agreements entered into under this  
15      section may include a grant to Alaska Native organiza-  
16      tions for, among other purposes—

17           “(1) collecting and analyzing data on marine  
18      mammal populations;

19           “(2) monitoring the harvest of marine mam-  
20      mals for subsistence and handicraft uses;

21           “(3) participating in marine mammal research  
22      conducted by the Federal Government, the State of  
23      Alaska, academic institutions, and private organiza-  
24      tions; and

1           “(4) developing marine mammal comanagement  
2           structures with Federal and State agencies, and im-  
3           plementing, and enforcing any harvest management  
4           plan included in the agreement.

5           “(f) OPPORTUNITY FOR ADVANCE NOTICE AND COM-  
6           MENT REGARDING PROPOSED REGULATIONS.—Before  
7           proposing any regulation under section 101(b) relating to  
8           the taking of a stock of marine mammals that is the sub-  
9           ject of a harvest management plan under this section, the  
10          Secretary shall—

11           “(1) solicit recommendations for such proposed  
12           regulation from each Alaska Native organization en-  
13           gaged in harvest management of the species or stock  
14           pursuant to this section; and

15           “(2) provide to each such organization—

16           “(A) each draft of the proposed regulation;

17           “(B) an analysis of how the proposed regu-  
18           lation would achieve the goal of being the least  
19           restrictive measures upon subsistence use of the  
20           stock and the conservation goals of the Act; and

21           “(C) an opportunity to comment on the  
22           proposed regulation prior to publication of any  
23           proposed regulations in the Federal Register.

1 “(g) PUBLIC NOTICE.—The Secretary shall publish  
 2 each harvest management plan entered into under this  
 3 section.

4 “(h) AUTHORIZATION OF APPROPRIATIONS.—There  
 5 are authorized to be appropriated for the purposes of car-  
 6 rying out this section—

7 “(1) to the Secretary of the Interior,  
 8 \$3,000,000 for each of fiscal years 2005 through  
 9 2009; and

10 “(2) to the Secretary of Commerce, \$3,000,000  
 11 for each of fiscal years 2005 through 2009.

12 “(i) FACA EXEMPTION.—The Federal Advisory  
 13 Committee Act (5 App. U.S.C.) shall not apply with re-  
 14 spect to the provision of any advice or recommendations  
 15 to the Secretary by any Alaska Native organization (in-  
 16 cluding any scientific review group associated with such  
 17 an organization), or the obtaining of any advice or rec-  
 18 ommendations by the Secretary from such an organiza-  
 19 tion, for the purpose of formulation or implementation of  
 20 a cooperative management agreement under this section.”.

21 **SEC. 17. ANNUAL REPORT REQUIREMENT.**

22 Section 103 (16 U.S.C. 1373(f)) is amended—

23 (1) in subsection (f) in the first sentence, by in-  
 24 serting “and notwithstanding Public Law 104–66,”  
 25 after “thereafter”; and

1           (2) by adding at the end the following:  
2           “(g) The head of each Federal agency that conducts  
3 and provides funds for research on marine mammals shall  
4 report annually to the Committee on Resources of the  
5 House of Representatives and the Committee on Com-  
6 merce, Science, and Transportation of the Senate on fund-  
7 ing provided and research conducted regarding marine  
8 mammals during the preceding year.”.

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